RECORD, CASE No. 14,229.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No., 226.

THE PLANT INVESTMENT COMPANY, APPELLANT,

vs.

THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY AND THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF FLORIDA.

FILED OCTOBER 9, 1890.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JUNE 17, 1893.

1 In the United States Circuit Court, Fifth Judicial Circuit, Northern District of Florida. In Chancery.

To the honorable judges of the circuit court of the United States for the northern district of Florida, in chancery sitting:

The Plant Investment Company, a body corporate, created and existing under the laws of the State of Connecticut and having its principal office at New Haven, in said State, and a citizen and resident of said State, brings this its bill of complaint against the Jacksonville, Tampa and Key West Railway Company, a corporation created and existing under the laws of the State of Florida and a citizen and resident of said State and having its principal office at Jacksonville, in said State, and against Edward A. Perry, governor of the State of Florida; William D. Barnes, comptroller; Edward S. Crill, treasurer; Charles M. Cooper, attorney general, and Pleasant W. White, commissioner of lands and immigration of said State, and *ex officio* trustees of the internal improvement fund of said State, citizens and residents of said State of Florida.

And thereupon your orators complain and say that the General Assembly of the State of Florida, by an act approved January 6, 1855, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," provided that all the lands granted to said State by the act of Congress passed the third day of March, 1845, and the act of Congress approved September 28th, 1850, together with all the proceeds of said lands accrued or that might thereafter accrue, should be set apart and declared a

2 separate fund, to be called the internal improvement fund of the State of Florida; and further provided that for the purpose of assuring a proper application of said fund for the purposes therein declared said lands and all the funds arising from the sale thereof, after paying the necessary expenses of selection, management, and sale, should be vested in five trustees, to wit, in the governor of said State, the comptroller of public accounts, the State treasurer, the attorney general, and the register of State lands, and their successors in office, to hold the same in trust for the uses and purposes provided for in said act; that by the 29th section of said act the right was reserved by the General Assembly to grant to such railroad companies to be thereafter chartered as they might deem proper, upon their compliance with the provisions of said act as to the manner of constructing the road and drainage, the alternate sections of the "swamp and overflowed lands"—that is, the lands granted to said State by the act of Congress of September 28, 1850, for six miles on each side of the line of road of any such company.

And your orators further say that the defendant The Jacksonville, Tampa and Key West Railway Company was incorporated in March, 1878, under the act of the legislature of the State of Florida approved February 19, 1874, entitled "An act to provide a general law for the incorporation of railroads and canals," as and under the

name of the Tampa, Peace Creek and St. John's River Railroad Company.

And your orators further say that the legislature of the State of Florida, by an act approved March 4, 1879, entitled "An act to grant certain lands to the Tampa, Peace Creek and St. John's River Railroad Company," granted to said company the alternate sections of the lands granted to the State of Florida by the United States by the act of Congress of September 28th, 1850, for and within
3 six miles on each side of the track or line of said company, provided that said company should comply with the provisions of said act approved January 6th, 1855, as to the manner of constructing such road and drainage and provided said company could adopt such gauge as it might choose; and by said act further granted to said company, in consideration of the greatly improved value which would accrue to the State from the construction of its road, ten thousand acres of the same class of lands for each mile of road it might construct, said lands to be of those which might be nearest the line of said road, its branches and extensions, the said last-named grant being made subject to the rights of all creditors of the internal improvement fund and to the trusts to which said fund is applicable under the act entitled "An act to provide for and encourage a liberal system of internal improvements in this State," approved January 6th, 1855.

And your orators further say that on the 27th day of June, 1881, the said Tampa, Peace Creek and St. John's River Railroad Company, by a resolution of its board of directors, changed its corporate name to Jacksonville, Tampa and Key West Railway Company; that on the 23rd day of August, 1881, said company filed a plat of its route with the board of trustees of the internal improvement fund of the State of Florida, and on the first day of September, 1881, said board passed a resolution reserving from sale for the benefit of said company the even-numbered sections of land for six miles on each side of its line; that on the 21st day of September, 1881, the said board, acting under the provisions of the act of the legislature of said State approved March 12th, 1879, entitled "An act to amend section 26 of an act entitled 'An act to provide a general law
4 for the incorporation of railroads and canals,' approved February 19th, 1874, and to 'grant aid to railroads and canals incorporated under said act,'" passed a resolution to reserve from sale, to further aid in the construction of said road, a quantity of lands in the even-numbered sections within twenty miles of said road sufficient to supply the deficiency existing in the even-numbered sections within six miles of said road, granted to aid in the construction thereof, a copy of which resolution is hereto annexed, marked "A," and is prayed to be taken as a part hereof.

Your orators further show that in the month of ——, 1883, your orators, as they were fully authorized and empowered by their charter to do, entered into a contract with the said defendant company to construct what was to be known as the Southern division of its road, to extend from the waters of Tampa bay, in Hillsborough county, to Kissimmee City, in Orange county, with a branch to or

near Bartow, in Polk county, and by said contract your orators were to receive, as a part of the consideration for the construction of such road, all the alternate sections of land to which said company was or might be entitled under any of the aforesaid acts and under any of the laws of the State of Florida for the construction thereof.

Your orators further say that said resolutions passed by the board of trustees September 21, 1881, had been published in the report of the official proceedings of said board and submitted to the legislature at its twelfth session, in January, 1883, with the reports of the heads of departments of the State government, and went forth to the world unchallenged as the solemn official action of said board of trustees, with the silent approval of the legislature at least; and your
5 orators, relying on the provisions of the said acts of March 4th & 12th, 1879, and the said resolutions of the said board of trustees, were induced to enter into the said contract with the said defendant company, believing that they would receive all the lands contemplated by said acts and resolutions.

Your orators further say that, to carry out in good faith the said contract made between them and the defendant company, the board of directors of said company passed a resolution on the 10th day of November, 1883, requesting and directing the said board of trustees of the internal improvement fund of Florida to convey to your orators all the alternate sections of land to which the said defendant company was or might be entitled under any of the laws of the State of Florida by reason of the construction of the said railroad from Tampa to Kissimmee City and the branch to or near Bartow, and a copy of said resolution was presented to the said board of trustees and entered in the minutes of their proceedings of November 21, 1883 (a copy of which resolution is hereto annexed, marked "B," and prayed to be taken as a part hereof), and the said trustees did not then intimate to your orators that they did not intend to carry out the said resolution of September 21, 1883.

And your orators further say that as soon after making said contract as practicable your orators commenced the construction of said road and completed the line from Tampa to Kissimmee, a distance of seventy-five miles, by the following January; and as soon as said road was reported as completed to the said board of trustees the State engineer was directed to inspect the same, which he did, and thereupon approved the same as being built according to the specifications required, and the said board of trustees accepted the same.

6 And your orators further say that when they applied for the lands to which they were entitled under their contract with said defendant company they discovered that not only the lands in the even sections within twenty miles but also within six miles of the road had been selected by one Hamilton Disston, to whom the board of trustees had contracted to sell four million acres of land to pay off a large indebtedness of their fund, as a part of his purchase; that your orators, through their attorney, protested against the said trustees permitting the said Disston to take these

lands, as nearly the entire body of the lands granted to the State under the act of Congress of September 28, 1850, amounting to many millions acres, were open to his selection, and if he were permitted to take the lands in alternate sections within twenty miles of said road your orators would be without remedy so far as any deficiency in the alternate sections within six miles of the road were concerned; that the said board of trustees decided that the claim of the said Disston for any lands outside the six-mile limit of said road should take precedence of the claim of said defendant company or your orators, contractors with said company.

Your orators further say that on the 19th day of February, 1884, the said trustees conveyed to your orators all the lands granted to the State of Florida by the United States by the act of Congress of September 28, 1850, lying in the even-numbered sections and within six miles of the line of said portion of said road constructed by your orators which then remained undisposed of, to wit, one hundred and twenty-three thousand four hundred and eighty-one acres, for the entire seventy-five miles of road.

7 Your orators further say that they are advised and believe and so allege that under said grant of alternate sections said defendant company is entitled to thirty-eight hundred and forty acres of land for each mile of road it constructs, and that where there is not sufficient land in the alternate sections within six miles of the line of road to make that quantity the deficiency can be made up from the alternate sections within twenty miles under the said act of March 12, 1879, and resolution of September 21, 1881, and that your orators, under their contract with said company, have the same right for such part of the road as they have constructed; and your orators allege that there is a deficiency in the quantity of land which your orators *is* entitled to receive of about one hundred and sixty thousand acres.

Your orators further say that when the said board of trustees decided that the said Hamilton Disston's selection of the lands in the alternate sections within twenty miles of the line of road took precedence of and was superior to the right thereto of said defendant company the said company, through the efforts of your orators, effected a compromise with the said Disston by which he relinquished his claim to about seventy-three thousand five hundred acres of said land.

That then your orators applied to the said trustees to convey said lands to your orators or the said defendant company to make up as near as might be the deficiency of land in the six-mile limit, but said board declined to do so, and on the 17th day of November, 1884, passed a resolution agreeing to convey said lands to the said Jacksonville, Tampa and Key West Railway Company as a

8 part of its special grant of ten thousand acres per mile under the said act of March 4, 1879, with the understanding, however, that if it should be held by a competent court that said company was entitled to make up any deficiency in its grant of alternate sections that said lands should be applied to that purpose and a like quantity of other land be conveyed to said company on its

special grant of ten thousand acres in lieu thereof. A copy of said resolution is hereto annexed, marked C, and is prayed to be taken as a part hereof.

Your orators further say that on the 4th day of December, 1884, the board of directors of said defendant company passed a resolution requesting, authorizing, and directing the said trustees to convey the lands contemplated by the said resolution of November 17, 1884, to your orators, it being the understanding that your orators should take them subject to the conditions in said resolution, and on December 30, 1884, the said board of trustees conveyed said lands to your orators upon the condition named.

Your orators further say that said trustees have also conveyed to the said Jacksonville, Tampa & Key West Railway Company by deed No. 12958, bearing date December 30, 1884, seven thousand nine hundred and seventy-three acres of land in even sections in township twenty-six south, of range twenty east, in said State, which lie within twenty miles of that portion of its road constructed by your orators; and your orators allege that they are also entitled to have these lands applied to making up the deficiency existing in the said grant of alternate sections.

Your orators are informed and believe and so allege that there are no other lands within twenty miles of said portion of
9 said road applicable to making up said deficiency except those herein referred to, and unless this honorable court should decree that your orators are entitled to have the same your orators will be without remedy.

To the end, therefore, that the said defendant, The Jacksonville, Tampa and Key West Railway Company, under its corporate seal, and the said defendants, Edward A. Perry, governor; William D. Barnes, comptroller; Edward S. Crill, treasurer; Charles M. Cooper, attorney general, and Pleasant W. White, commissioner of lands and immigration, of the State of Florida, and *ex officio* trustees of the internal improvement fund of said State, upon their several and respective corporal oaths, may, to the best and utmost of their respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every one of them distinctly interrogated thereto, and that it may be ascertained and determined by this honorable court what deficit of lands exists in the alternate sections of land within six miles of that portion of the said Jacksonville, Tampa and Key West railway extending from Tampa to Kissimmee City, and that it may be decreed that your orators are entitled to make up such deficit from the like alternate sections within twenty miles of said road, and that it may be decreed that the said seventy-three thousand & five hundred acres of land conveyed to your orators under the resolution of the board of trustees of the internal improvement fund of November 17, 1884, and the resolution of the said Jacksonville, Tampa and Key West Railway Company of December 4th, 1884, by deed of said trustees bearing date December
10 30th, 1884, shall be applied to making up such deficit, and

that your orators shall hold the same absolutely and without condition, and that it may be decreed that the said Jacksonville, Tampa and Key West Railway Company shall convey to your orators all the land- in even-numbered sections which were conveyed to it by the trustees of the internal improvement fund by deed No. 12958, dated December 30, 1884, and which lie within twenty miles of said railway from Tampa to Kissimmee City, and that it may be decreed that the said trustees of the internal improvement fund shall convey to the said Jacksonville, Tampa and Key West Railway Company, upon its special grant of ten thousand acres to the mile, an equal quantity of land to that so decreed to be conveyed to your orators, and in lieu thereof, of the lands granted to the State of Florida by the act of Congress of September 28, 1850, lying nearest said portion of its road, other than those decreed to be conveyed to your orators, and that your orators may have such other and further relief in the premises as the nature and circumstances of this case may require and to this honorable court shall seem meet—

May it please your honors to grant unto your orators a writ of subpœna to be directed to the said Jacksonville, Tampa and Key West Railway Company and the said Edward A. Perry, governor; William D. Barnes, comptroller; Edward S. Crill, treasurer; Charles M. Cooper, attorney general, and Pleasant W. White, commissioner of lands and immigration, of the State of Florida, and *ex officio* trustees of the internal improvement fund of said State, thereby commanding them and each of them, at a certain time and under a certain penalty therein to be limited, personally to appear
11 before this honorable court and then and there full, true, direct, and perfect answer make to all and singular the premises, and, further, to stand to, perform, and abide such further order, direction, and decree therein as to this honorable court shall seem meet; and your orators will ever pray, &c.

W. S. CHISHOLM,
FRED. T. MYERS,
Solicitors for the Complainant.

12 A.

The Jacksonville, Tampa and Key West Railway Company having applied for a reservation of lands within twenty miles of said road to supply deficiency in the even-numbered sections, the following resolution was adopted:

Resolved, That a quantity of land in the even-numbered sections within twenty miles of the Jacksonville, Tampa and Key West railroad sufficient to supply the deficiency existing in the even-numbered sections within six miles of said road granted to aid in the construction thereof shall be reserved from sale to further aid in the construction of said road: Provided, that said quantity of land shall remain unappropriated in the even-numbered sections within the limits aforesaid, and provided, further, that said reservation shall not take effect until ten miles of said road shall have been completed, equipped, and in running order.

13 B.

Whereas the portion of this company's railroad from Tampa to Kissimmee City, including the portion of the branch extending therefrom to or near Bartow, in Polk county, is under contract for construction by the Plant Investment Company, and a part of the consideration to be paid to the said Plant Investment Company is all the alternate sections of lands granted by the State of Florida to this company to which it is or may be entitled by reason of the construction of the portions of its road or parts thereof, as aforesaid: Now be it—

Resolved, That the trustees of the internal improvement fund of Florida be, and they are hereby, requested, authorized, and directed to convey by deed or otherwise to the said Plant Investment Company or its assigns all the alternate sections of land to which this company is or may be entitled under any of the laws of the State of Florida by reason of the construction of the said railroad from Tampa to Kissimmee City and the said branch to or near Bartow.

Be it further resolved, That this resolution be entered upon the minutes of this company, and a true extract, certified under the corporate seal of this company, signed by the president and attested by the secretary in the presence of at least two witnesses, one of whom shall be a commissioner of deeds for the State of Florida, be delivered to the said Plant Investment Company.

This is to certify that the foregoing resolutions are true extracts from the minutes of the meeting of the board of directors of the Jacksonville, Tampa and Key West Railway Company held
14 on the tenth day of November, 1883.

In witness whereof the said Jacksonville, Tampa and Key West Railway Company has caused its corporate seal to be hereto affixed, and this certificate to be signed by its president and attested by its secretary.

WM. VAN FLEET, *President.*

In the presence of—
J. E. INGRAHAM.
EDWARD B. POWELL.
CHAS. EDGAR MILLS.

Attest:
[SEAL.] ALLAN W. McCULLOCH,
Secretary pro tem.

STATE OF NEW YORK, }
City & County of New York, } ss:

I, Charles Edgar Mills, a commissioner duly appointed by the governor of the State of Florida to take the acknowledgment and proof of deeds and other instruments to be recorded in said State of Florida, do hereby certify that William Van Fleet, president, and Allan W. McCulloch, secretary *pro tem.*, who are personally known to me to be such officers and to be the identical persons whose names are subscribed to and who executed the foregoing instrument, ap-

peared before me this day in person and acknowledged that as the president and secretary *pro tem.* of the Jacksonville, Tampa and Key West Railway Company they signed, sealed, and delivered the foregoing instrument, with the corporate seal of the said Jack-
15 sonville, Tampa and Key West Railway Company thereto affixed, as the free and voluntary act and deed of the said company for the uses and purposes therein mentioned, and that said instrument was executed in the presence of myself and of the other subscribing witness thereto, Edward B. Powell, on this 12th day of November, A. D. 1883.

In witness whereof I have hereunto set my hand and affixed my official seal this 12th day of November, A. D. 1883.

[SEAL.] CHARLES EDGAR MILLS,
Commissioner of Florida in New York,
115 *and* 117 *Broadway, N. Y. City.*

16 C.

Resolved, in the matter of contested claims to lands between the—
1. Florida Land and Improvement Company;
2. The A. G. C. C. and Okeechobee Land Company;
3. The Jacksonville, Tampa and Key West Railway Company,

That upon the filing with the commissioner of lands of an agreement of compromise to be signed by W. T. Forbes, representing the first two companies, and by W. S. Chisholm, representing the last company, this board authorizes the issue of deeds to the first two companies for such lands in the even sections as may be specified in said compromise, and to the Jacksonville, Tampa and Key West railway for the remainder of lands under contest, the lands to be conveyed to the Jacksonville, Tampa and Key West Railway Company to be conveyed as a part of the special grant of ten thousand acres per mile made to said company under the act of March 4th, 1879, with the understanding that if it should hereafter be determined either by this board or the courts that said railway company is entitled to make up deficiencies in the alternate sections within six miles from the alternate sections within twenty miles that the quantity of land so conveyed shall be allowed to go to making up such deficiency and a like quantity be conveyed to said company from other lands in lieu thereof under the special grant.

17 Endorsement: U. S. circuit court, fifth circuit, northern dist. of Florida. The Plant Investment Company *vs.* Jacksonville, Tampa & Key West Railway Co. and Trustees of I. I. Fund of State of Florida. Bill of complaint. Filed Apr. 9, 1885. Philip Walter, clerk. W. S. Chisholm and Fred. T. Myers, sols. for compl't.

18 UNITED STATES OF AMERICA, }
Northern District of Florida. }

The President of the United States of America to Jacksonville, Tampa & Key West Railway Company & Edward A. Perry, governor; Wm. D. Barnes, comptroller; Edward S. Crill, treasurer; Chas. M. Cooper, att'y general, and Pleasant W. White, commissioner of lands, &c., of the State of Florida, & *ex officio* trustees of the int. imp. fund of Fla.:

We command you and every of you that you appear before the judges of the circuit court of the United States of America for the fifth circuit and northern district of Florida, at Jacksonville, in said district, on the first Monday, being the 4 day, of May next, to answer to a bill of complaint exhibited against you by the Plant Investment Company, a body corporate, created & existing under the laws of the State of Connecticut, and filed in the clerk's office of said court, and then and there to receive and abide by such judgment and decree as said court shall have considered in this behalf; and this you are not to omit upon pain of judgment by default being pronounced against you.

To the marshal of the United States to execute and return.

Witness the Honorable Morrison R. Waite, Chief Justice
[SEAL.] of the Supreme Court of the United States, and the seal of this court, at the city of Jacksonville, in said district, this 9 day of April, A. D. 1885.

PHILIP WALTER, *Clerk.*

W. S. CHISHOLM, ESQ.
FRED. T. MYERS, ESQ.,
Solicitor- for Compl't.

Memorandum.

The above-named defendants are notified that unless
[SEAL.] they shall enter their appearance in the clerk's office of said court, at Jacksonville aforesaid, on or before the day to which the above is returnable, the complaint will be taken against them as confessed and a decree entered accordingly.

PHILIP WALTER, *Clerk.*

19 [Endorsed:] No. —. Circuit court United States, northern district of Florida. Plant Investment Company *vs.* Jacksonville, Tampa & Key West Railway Co. *et als.* Chancery subpœna. Returnable to rule day, first Monday in —, A. D. 188–. ——, clerk. Filed Apr. 15, A. D. 1885. Philip Walter, clerk. ——, complainant's solicitor.

Executed at Jacksonville, in the northern district of Florida, on the 10th day of April, 1885, by delivering to and leaving with M. R. Moran, sup't of the defendant corporation, The J., T. & K. W. railway, a true copy hereof, and at Tallahassee, in the northern district of Florida, on the 13th of April, A. D. 1885,

by delivering to Edward A. Perry, governor; Wm. D. Barnes, comptroller; Edward S. Crill, treasurer; Pleasant W. White, commissioner of lands, and at Jacksonville, in the northern district of Florida, by delivering a true copy hereof to Chas. M. Cooper, att'y general, on the 15th day of —, 1885, being *ex officio* trustees of the internal imp. fund of the State of Fla., by delivering to each of them a true copy hereof, at the same time exhibiting to each of them this original writ.

JOSEPH H. DURKEE,
U. S. Marshal,
By GEO. W. EAVERSON, *Deputy.*

20 In United States Circuit Court, Fifth Circuit, Northern District of Fla.

THE PLANT INVESTMENT COMPANY
vs.
THE JACKSONVILLE, TAMPA AND KEY WEST RAILway Company and The Trustees of the Internal Improvement Fund of the State of Florida. } In Chancery.

The clerk of said court will enter the appearance of the Trustees of the Internal Improvement Fund of the State of Florida, and oblige,

C. M. COOPER,
Sol. for said Trustees.

Indorsements: In circuit ct. of the United States, fifth circuit, northern district of Florida. In chancery. The Plant Investment Company *vs.* The Jacksonville, Tampa & Key West Railway Company and The Trustees of the I. I. Fund of Fla. Appearance of trustees of I. I. fund. Filed May 4, 1885. Philip Walter, clerk. C. M. Cooper, sol. for trustees.

21 In United States Circuit Court, Fifth Circuit, Northern District of Florida.

THE PLANT INVESTMENT COMPANY
vs.
THE JACKSONVILLE, TAMPA AND KEY WEST RAILway Company and The Trustees of the Internal Improvement Fund of the State of Florida. } In Chancery.

Demurrer of said Trustees.

These defendants, said trustees of said fund, by protestation, not confessing any or all the matters and things in complainant's bill contained to be true in such manner and form as therein alleged, do demur to said bill and for cause of demurrer show:

1st. It appears on the face of said bill that this court has no jurisdiction in the premises.

2nd. The said bill contains no equity.

3rd. The complainant in said bill does not state facts sufficient to entitle it to the relief prayed or to any discovery or relief against these defendants as to the matters contained in said bill.

C. M. COOPER,
Solicitor for said Trustees.

22 I certify that in my opinion the foregoing demurrer is good in law.

C. M. COOPER,
Sol. for Trustees.

STATE OF FLORIDA, }
Leon County. }

Personally appeared before me Edward A. Perry, governor of said State; Edward S. Crill, treasurer of said State, and Charles M. Cooper, attorney general of the said States and trustees of the internal improvement fund thereof, who, being duly sworn, say that they know the contents of the foregoing demurrer, and that the same is not interposed for delay.

E. A. PERRY.
E. S. CRILL.
C. M. COOPER.

Sworn to and subscribed before me this 18th day of May, A. D. 1885.

L. B. WOMBWELL,
Notary Public.

[SEAL.]

Indorsement: The United States circuit court, fifth circuit, northern district of Florida. In chancery. The Plant Investment Company *vs.* The Jacksonville, Tampa and Key West Railway Company and The Trustees of I. I. Fund of Fla. Demurrer of trustees. Filed May 28, 1885. Philip Walter, clerk. C. M. Cooper, sol. for trustees.

23 In the United States Circuit Court, Northern District of Florida.

THE PLANT INVESTMENT COMPANY, Complainant,
vs.
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY Company and The Trustees of the Internal Improvement Fund of the State of Florida, Defendants. } In Equity.

The Trustees of the Internal Improvement Fund of the State of Florida, defendants to the above-stated cause, having filed a demurrer therein—

It is ordered that said demurrer be, and it is hereby, set down for argument at the next term of this court.

On motion of—

W. S. CHISHOLM,
F. T. MYERS,
Complainant's Solicitors.

Indorsement: Filed Aug. 3rd, 1885. P. Walter, clerk.

24 MONDAY MORNING, *February 11th*, 1889.

Court met pursuant to adjournment.

Present: The Honorable Emory Speer, district judge; R. M. Call, district att'y; W. C. Bird, marshal; Philip Walter, clerk.

Court was opened in due form by the crier.

THE PLANT INVESTMENT COMPANY *et al.*
vs.
THE JACKSONVILLE, TAMPA & KEY WEST R. R. COMPANY *et al.* } In Equity.

Set for Tuesday, Feb. 12th, 1889.

Ordered that this court do now adjourn until to-morrow morning at ten o'clock.

25 WEDNESDAY MORNING, *Feb. 13th*, 1889.

Court met pursuant to adjournment.

Present: The Honorable Emory Speer, district judge; R. M. Call, U. S. att'y. W. C. Bird, marshal; Philip Walter, clerk.

Court was opened in due form by the crier.

PLANT INVESTMENT CO. *et al.*
vs.
THE JACKSONVILLE, TAMPA & KEY WEST R. R. CO. *et al.* }

Continued to adj'd term.

Ordered that this court do now adjourn until to-morrow morning at ten o'clock.

26 MONDAY MORNING, *April 1st*, 1889.

Court met pursuant to adjournment.

Present: The Honorable Harry T. Toulmin, district judge; R. M. Call, U. S. att'y; W. C. Bird, marshal; Philip Walter, clerk.

Court was opened in due form by the crier.

PLANT INVESTMENT COMPANY *et al.*
vs.
THE JACKSONVILLE, TAMPA AND KEY WEST R. R. COMPANY *et al.* }

Continued.

Ordered that this court do now adjourn until to-morrow morning at ten o'clock.

27 In the Circuit Court of the United States, Northern District of Florida. In Chancery.

THE PLANT INVESTMENT COMPANY
vs.
THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF THE STATE OF FLORIDA *et al.* }

This cause having been argued on demurrer to the bill of complaint by counsel for complainant and for the defendants, said

trustees, and having been taken under advisement by the court, it is considered, ordered, and decreed that the demurrer of said defendants, said trustees, to complainant's bill be, and is hereby, sustained, and said bill of complaint be, and is hereby, dismissed with costs.

Done this 6th day of May, 1890.

CHAS. SWAYNE, *U. S. Judge.*

Indorsements: In circuit court of United States, northern dist. of Florida. The Plant Investment Company *vs.* The Trustees of the Internal Improvement Fund of the State of Florida *et al.* Decree sustaining demurrer and dismissing bill. Filed this May 6th, 1890. Philip Walter, clerk.

28 In the Circuit Court of the United States, Fifth Judicial Circuit, in and for the Northern District of Fla. In Chancery.

THE PLANT INVESTMENT COMPANY, a body corporate existing under and by virtue of the laws of the State of Connecticut and a citizen and resident of said State of Connecticut, having its principal place of business at New Haven, in said State, Plaintiff,

vs.

THE JACKSONVILLE, TAMPA & KEY WEST RAILWAY COMPANY, a corporate body under the laws of the State of Florida and a citizen and resident of said State of Florida, having its principal place of business at Jacksonville, Florida, and Edward A. Perry, governor; Wm. D. Barnes, comptroller; Edward S. Crill, treasurer; Charles M. Cooper, att'y general, & Pleasant W. White, commissioner of lands and immigration of said — and *ex officio* trustees for the internal improvement fund of the State of Florida, Defendants.

The above-named complainant, conceiving itself aggrieved by the final decree entered on the 6th day of May, A. D. 1890, in the above-entitled cause, doth hereby appeal therefrom to the
29 Supreme Court of the United States, and it prays that this its appeal may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to the Supreme Court.

JOHN E. HARTRIDGE,
Solicitor for Complainant.

The appeal, as prayed in above —, is hereby allowed.

CHAS. SWAYNE, *U. S. Judge.*

Done this 15th day of May, 1890.

Indorsement: U. S. circuit court, fifth judicial circuit, northern district of Florida. In chancery. Plan*d* Investment Company *vs.* The Jacksonville, Tampa & Key West Railway Company and The

Trustees of the Internal Improvement Fund of Florida. Filed May 15th, 1890. Philip Walter, clerk. John E. Hartridge, solicitor for compl't.

30 In the Circuit Court of the United States, Fifth Judicial Circuit, in and for the Northern District of Florida. In Chancery.

In the matter of the Plant Investment Company, a body corporate under the laws of the State of Connecticut and a citizen and resident of the State of Connecticut, against The Jacksonville, Tampa Key West Railway Company, a body corporate under the laws of the State of Florida and a citizen and resident of the State of Florida, and Edward A. Perry, governor; W. D. Barnes, comptroller; Edward A. Crill, treasurer; Charles M. Cooper, attorney general, and Pleasant White, commissioner of lands and of immigration of said State of Florida, and *ex officio* trustees of the internal improvement fund of Florida.

This cause coming on to be further heard upon the presentation of the appeal bond herein, it is ordered and directed that said appeal bond be, and the same is hereby, approved, and it is ordered and directed that the same be filed *nunc pro tunc* as of the 15th day of May, A. D. 1890, the date of the entry of said appeal.

14th June, 1890.

CHAS. SWAYNE, *U. S. Judge.*

Indorsement: U. S. circuit court, fifth circuit, northern district of Florida. In chancery. The Plant Investment Company *vs.* The Trustees of the Internal Improvement Fund of Florida *et al.* Filed May 15, 1890. Philip Walter, clerk. John E. Hartridge, solicitor for complainant.

31 UNITED STATES OF AMERICA, }
Duval County, Florida. }

Know all men by these presents that we, The Plant Investment Company, a body corporate existing and being under and by virtue of the laws of the State of Connecticut and a citizen and resident of said State of Connecticut, and Patrick McQuaid and John H. Stephens, of Jacksonville, Florida, are held and firmly bound unto the Jacksonville, Tampa & Key West Railway Company, a body corporate under the laws of the State of Florida and a citizen and resident of the said State of Florida, and unto Edward A. Perry, governor; W. D. Barnes, comptroller; Edward A. Crill, treasurer; Charles M. Cooper, attorney general; Pleasant White, commissioner of lands and of immigration of said State of Florida, and *ex officio* trustees of the internal improvement fund of the State of Florida, and their successors in office as *ex officio* trustees of the internal improvement fund of the State of Florida and assigns in the full and just sum of five hundred dollars ($500.00), to be paid to the said Jacksonville, Tampa & Key West Railway Company, Edward A.

Perry, governor; W. D. Barnes, comptroller, Edward A. Crill, treasurer; Charles M. Cooper, attorney general; Pleasant White, commissioner of lands and of immigration of the State of Florida, and *ex officio* trustees of the internal improvement fund of the State of Florida, and their successors in office as *ex officio* trustees of the internal improvement fund of the State of Florida and assigns; to which payment, well and truly to be made, we bind ourselves, our successors and assigns, and our heirs, executors, and administrators, jointly and severally, with these presents.

Signed, sealed, and dated this — day of June, A. D. 1890.

32 Whereas lately, at a term of the circuit court in and for the fifth judicial circuit of the United States, held in and for the northern district of Florida, in a suit pending in said court between The Plant Investment Company, a body corporate and existing under and by virtue of the laws of the State of Connecticut and a citizen and resident of said State of Connecticut, having its principal place of business at New Haven, in said State, plaintiff, and The Jacksonville, Tampa & Key West Railway Company, a corporate body under the laws of the State of Florida and a citizen and resident of said State of Florida, having its principal place of business at Jacksonville, Florida, and Edward A. Perry, governor; W. D. Barnes, comptroller; Edward A. Crill, treasurer; Charles M. Cooper, attorney general, and Pleasant N. White, commissioner of lands and of immigration of said State of Florida, and *ex officio* trustees for the internal improvement fund of the State of Florida, defendants, a decree was rendered against the said Plant Investment Company, and the said Plant Investment Company having prayed and obtained an appeal from said decree to reverse the decree in the aforesaid suit to the Supreme Court of the United States, to be holden at Washington, D. C., on the first Monday in October, A. D. 1890:

Now, the condition of this obligation is such that if the said Plant Investment Company shall prosecute this appeal to effect and answer all damages and costs if it fail to make good its plea, then this obligation to be void; else to remain in full force and virtue.

THE PLANT INVESTMENT COMPANY,
By H. B. PLANT, *Pres't.* [SEAL.]
R. B. SMITH, *Ass't Sec't'y.* [SEAL.]
33 P. McQUAID. [SEAL.]
JNO. H. STEPHENS. [SEAL.]

Signed, sealed, and delivered in the presence of me by the Plant Investment Company.

SIMON LOUGHMAN,
[SEAL.] *Notary Public*, # 136, *City and County New York.*

Witness:
P. N. BENACHI,
J. A. FARLIE,
As to McQuaid and Stephens.

STATE OF NEW YORK, }
City and County of New York. }

Before me, Simon Loughman, a notary public for the city and county of New York, duly appointed by the governor of the State of New York, according to the constitution and laws of said State, personally appeared H. B. Plant, president, and R. B. Smith, assistant secretary of the Plant Investment Company, to me well known to be the persons who in their several official capacities as above set forth executed the foregoing instrument or bond and severally acknowledged the execution thereof to be the free act and deed of the Plant Investment Company.

In witness whereof I have hereunto set my hand and affixed my official seal this 10th day of June, A. D. 1890.

[SEAL.] SIMON LOUGHMAN,
Notary Public # 136.

Indorsement: U. S. circuit court, 5th judicial cir't, north. dist. of Fla. Appeal bond. The Plant Investment Co. *vs.* The Trustees of the Internal Improvement Fund of Fla. *et al.* Filed June 14, 1890, as of May 15th, 1890. Philip Walter, clerk. Jno. E. Hartridge, pl'ff's att'y.

34 United States Circuit Court, Fifth Judicial Circuit, Northern District of Fla.

PLANT INVESTMENT COMPANY
vs.
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY and The Trustees of the Internal Improvement Fund of the State of Florida.

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the northern district of Florida, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between The Plant Investment Company of the State of Connecticut and The Jacksonville, Tampa and Key West Railway Company and The Trustees of the Internal Improvement Fund of the State of Florida, a manifest error hath happened, to the great damage of the said Plant Investment Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have
35 the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the

said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal U.S. Circuit Court, Fifth Circuit, Northern Dist. of Florida.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 6th day of October, in the year of our Lord one thousand eight hundred and ninety.

PHILIP WALTER, *Clerk.*

36 United States Circuit Court, Fifth Judicial Circuit, Northern District of Florida.

THE PLANT INVESTMENT COMPANY
vs.
THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY and The Trustees of the Internal Improvement Fund of the State of Florida.

I, Philip Walter, clerk of the United States circuit court, fifth judicial circuit, northern district of Florida, do hereby certify that the foregoing pages, numbered from one to thirty-six, inclusive, *is* a true, full, and complete transcript of the record in above-entitled cause.

Seal U.S. Circuit Court, Fifth Circuit, Northern Dist. of Florida.

In testimony whereof I have hereunto set my hand and official seal, at the city of Jacksonville, in the district and circuit aforesaid, this 6th day of October, 1890, and of our Independence the 115th year.

PHILIP WALTER, *Clerk.*

Endorsed on cover: Case No. 14,229. N. Florida C. C. U. S. No. 226. The Plant Investment Company, appellant, *vs.* The Jacksonville, Tampa & Key West Railway Company and The Trustees of the Internal Improvement Fund of the State of Florida. Filed October 9, 1890.

Office Supreme Court U. S.
FILED.
JAN 16 1894
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

THE PLANT INVESTMENT COMPANY

vs.

THE JACKSONVILLE, TAMPA & KEY WEST RAILWAY COMPANY AND THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA.

Brief of Appellants Solicitors.

R. G. Erwin,
John E. Hartridge,
Solicitors for Appellant.

In the Supreme Court of the United States.

THE PLANT INVESTMENT COMPANY, Appellant,

against

THE JACKSONVILLE, TAMPA & KEY WEST RAILWAY COMPANY AND THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA.

STATEMENT OF CASE.

This is an appeal from a decree of the United States Circuit Court for the Northern District of Florida, dated May 6th, 1890, dismissing the bill in this cause.

The action is a bill in equity filed April 9th, 1885, by the complainant, The Plant Investment Company, a citizen and resident of Connecticut, against the defendants, the Jacksonville, Tampa & Key West Railway Company and the Trustees of the Internal Improvement Fund of Florida, citizens and residents of the State of Florida.

The bill avers that the General Assembly of the State of Florida, by an act approved January 6th, 1855, entitled "An act to provide for and encourage a liberal system of internal improvements in this State," provided that all the lands granted to said State by the Act of Congress passed the 3rd day of March, 1845, and the Act of Congress approved September 28th, 1850, together with all the proceeds of said lands accrued or that might thereafter accrue, should be set apart and declared a separate fund, to be called the Internal Improvement Fund of the State of Florida. And provided further that said lands and the funds arising from the sale thereof should be vested in trustees, reserving the right to the General Assembly to grant railroads thereafter chartered, upon the compliance with the provisions of said act, the alternative sections of swamp and overflowed lands.

That the Jacksonville, Tampa & Key West Railway Company was duly incorporated in 1878 under the general incorporation act of the State of Florida under the name of the Tampa, Peace Creek & St. Johns River Railroad Company.

That the Legislature of the State of Florida, by an act approved March 4th, 1879, granted to the said company the alternate sections of land granted to the State of Florida by Act of Congress of September 28th, 1850, for and within six miles on each side of the track of said Company, upon compliance with the provisions of the Act of January 6th, 1855; and further granted ten thousand acres of land for each mile of road nearest those which might be nearest the line of road and its branches, the last grant being subject to the rights of creditors of the Internal Improvement Fund.

That on the 27th of June, 1881, the Tampa, Peace Creek & St. Johns River Railroad Company changed its name to the Jacksonville, Tampa & Key West Railway Company, and on the 23rd of August, 1881, filed a plat of its road with the Trustees of the Internal Improvement Fund; that on the 1st of September, 1881, the said Trustees passed a resolution reserving the even-numbered sections of land for six miles on each side of said line of road for the benefit of the Jacksonville, Tampa & Key West Railway Company. And on the 21st of September, 1881, pursuant to an act of the Legislature approved March 12th, 1879, passed a resolution to reserve from sale to further aid in the construction of the Jacksonville, Tampa & Key West Railroad the even-numbered sections within twenty miles of said road, to be used to supply the deficiency in the even-numbered sections within six miles of the road.

That in 1883 complainant contracted with the Jacksonville, Tampa & Key West Railway Company to construct so much of its line as extended from Tampa Bay, Florida, to Kissimmee, Florida, with a branch to Bartow in said State, a distance of seventy five miles, by the terms of which complainant was to receive all the alternate sections of land to which the said Jacksonville, Tampa & Key West Railway Company was or might be entitled under any of the before mentioned acts of the Legislature.

That the resolution of September 21st, 1881, had been submitted to the Legislature of the State of Florida and published as the act of the Board of Trustees, and that relying upon the provision of the acts of March 4th and 12th, 1879, and said reso-

lution, the complainant entered into said contract of construction.

That on the 10th of November, 1883, the Jacksonville, Tampa & Key West Railway Company passed a resolution directing said Board of Trustees of the Internal Improvement Fund to convey to complainant all of the lands to which said company might be entitled under the laws of the State by reason of the construction of its road from Tampa to Kissimmee and the branch near Bartow, and that a copy of said resolution was sent to the Board and incorporated in the minutes of their meeting of November 21st, 1883.

That complainant constructed said road as contracted, and the same was accepted and approved by the Board of Trustees of the Internal Improvement Fund.

That when complainant applied for the lands it was discovered that the lands in the even-numbered sections, within the twenty-mile limit and within the six-mile limit were being selected by Hamilton Disston, to whom the Board of Trustees had contracted to sell four million acres; that protesting against this act the Trustees decided that said Disston's selection of lands outside of the six-mile limit should take precedence of the claim of the Jacksonville, Tampa & Key West Railway Company; that on the 19th of February, 1884, the Trustees conveyed to complainant all of the lands undisposed of granted by the Act of Congress of 1850 in the even-numbered sections within six miles of the line of road constructed.

That complainant is entitled to thirty-eight hundred and forty acres of land for each mile of road it constructed to make up the deficiency from the alternate sections within six miles, under the Act of March 12th, 1879, and the resolution of September 21st, 1881, and that there is a deficiency of one hundred and sixty thousand acres.

That when the Board of Trustees decided that the said Disston's selection of land within the twenty-mile limit should have precedence, a compromise was effected by which Disston's claim to seventy-three thousand five hundred acres of land was released.

That the said Board of Trustees declined to allow said seventy-three thousand five hundred acres to go to make up the deficiency of land within the six-mile limit, and on the 17th of November, 1884, agreed to convey said acreage as a part of the

special grant of ten thousand acres per mile under the Act of March 4th, 1879, and on the 4th of December, 1884, by resolution, directed that said lands be conveyed subject to the conditions in the resolution of December 4th, 1884.

That said trustees also conveyed to the Jacksonville, Tampa & Key West Railway Company on December 30th, 1884, seven thousand nine hundred and seventy-three acres of land in even-numbered sections in township twenty-six, range twenty, east, within twenty miles of the road constructed by complainant, and that complainant is entitled to have these lands to apply to the deficiency in the grant of alternate sections.

That there are no other lands within twenty miles of the road constructed by the complainant to make up said deficiency except those mentioned.

THE BILL PRAYS.

First. That the deficiency existing in the alternate sections within the six-mile limit may be ascertained.

Second. That the Plant Investment Company may be decreed to be entitled to make up said deficiency from like alternate sections within the twenty-mile limit.

Third. That the seventy-three thousand five hundred acres of land conveyed to The Plant Investment Company, under the resolution of the trustees on November 17th, 1884, and the resolution of the Jacksonville, Tampa & Key West Railway Company of December 4th, 1884, by deed of Trustees bearing date December 30th, 1884, shall be applied to make up such deficiency and that The Plant Investment Company shall hold the same absolutely and without condition.

Fourth. That the Jacksonville, Tampa & Key West Railway Company may be decreed to convey to The Plant Investment Company all lands in the even-numbered sections which were conveyed to it by the trustees by deed bearing date December 30th, 1884, and which lies within the twenty-mile limit.

Fifth. That the Trustees may be decreed to convey to the Jacksonville, Tampa & Key West Railway Company upon its special grant of ten thousand acres to the mile an equal quanity of land to that so decreed to be conveyed to The Plant Investment Company, and in lieu thereof the lands granted to the State of Florida by the Act of Congress of September 28th, 1850, lying nearest said portion of its road other than those decreed to be conveyed to The Plant Investment Company.

To this bill the Trustees of the Internal Improvement Fund demurred on the following grounds:

1st. That the Court has no jurisdiction.

2d. That it is without equity and does not state facts that entitle complainant to relief.

On the hearing a decree was rendered sustaining the demurrer and dismissing the bill.

THE ACTS OF THE LEGISLATURE OF MARCH 4TH AND 12TH, 1879, REFERRED TO IN THE BILL, ARE AS FOLLOWS:

"CHAPTER 3168.—(NO. 70.)

"An Act to Grant Certain Lands to the Tampa, Peace Creek and St. Johns River Railroad Company.

"The People of the State of Florida, represented in Senate "and Assembly, do enact as follows: Section 1. That the alter- "nate sections of the lands granted to the State of Florida by the "United States by the Act of Congress of September 28, 1850, "for and within six miles on each side of the track or line of the "Tampa, Peace Creek and St. Johns River Railroad Company, "a body corporate, chartered under the laws of this State, to con- "struct a line of railroad from the waters of Tampa Bay to the "waters of the St. Johns river to pass through the counties of "Hillsborough, Polk and Orange, be and the same are hereby "granted to said Company; provided, however, the said Company "shall comply with the provisions of the act entitled 'An Act to "Provide for and Encourage a Liberal System of Internal Im- "provements in this State,' approved January 6, 1855, and the "amendments thereto, as to the manner of constructing the road "and drainage: Provided, however, That nothing herein shall "prevent such company from adopting such gauge as it may "choose.

"Sec. 2. That if said company shall so amend its charter "as to authorize it to construct its road, or a branch road or ex- "tension, through the counties of Marion and Putnam, or either, "or through any part of or into either, then the said company "shall be entitled to and the State hereby grants, the alternate "sections within the limit of six miles aforesaid, of and along the "line of such road branches or extensions, on the terms and con- "ditions aforesaid.

"Sec. 3. That upon the completion of the grading and lay- "ing on the cross-ties of ten miles of said road, its branches or "extensions, the titles to the said alternate sections opposite said "ten miles of road so graded and furnished with cross-ties shall "vest in said company and a deed therefor shall be issued by the "Trustees of the Internal Improvement Fund to the said com- "pany: Provided, however, That for every forty miles of road

"so graded and furnished with cross-ties ten miles shall be com-
"pleted, ironed and equipped and in operation.

Sec. 4 "That upon the filing with the Board of Trustees by
"said company of the survey of the route which may be selected by
"said company, or any twenty miles thereof, the trustees shall
"withdraw, at the election of said company or its president, the
"odd or even numbered sections within such limits alongside or
"opposite the route or section thereof of twenty miles so sur-
"veyed from sale: Provided, however, That the same shall be
"restored to sale by the board if the survey of the entire route is
"not filed within twelve months from the passage of this act.

"Sec. 5. That the State of Florida hereby grants to said
"company, in consideration of the greatly improved value which
"will accrue to the State from the construction of said road, its
"branches and extensions, ten thousand acres for each mile of
"road it may construct of the lands granted to the State under
"said act of September 28, 1850; said lands to be of those which
"may be nearest the line of said road, its branches and exten-
"sions: Provided, however, That the grant of lands made by this
"section is made subject to the rights of all creditors of the In-
"ternal Improvement Fund and to the trusts to which said fund
"is applicable and subject under the act entitled 'An act to pro-
"vide for and encourage a liberal system of Internal Improve-
"ments in this State,' approved January 6, 1855, and subject to
"control, management, sale and application of said fund, and the
"lands constituting the same by the Trustees of the Internal Im-
"provement Fund, for the purpose of said trust under said act:
"Provided, however, That the title to the lands granted under
"this section is not to vest until they shall be released from the
"indebtedness existing against said trust fund it being the pur-
"pose of this section to grant the residuary interests of the State
"in the lands granted by said act of September 28, 1850, after
"satisfaction has been made of said indebtedness, to the extent
"or in the quantity indicated hereby, to said railroad company:
"Provided further, however, That upon any arrangement being
"consummated between said company and the Trustees of the
"Internal Improvement Fund and the creditors of such fund, for
"the release of such lands from such indebtedness, then the
"titles to such lands as may be so released shall vest in the said
"company in the proportion of ten thousand acres for each mile
"of railroad then graded and furnished with cross-ties: Provided,
"That for every forty miles of road so graded and furnished with
"cross-ties ten miles shall be fully completed and equipped
"and in actual operation: Provided further, That all the lands
"granted by this act, or their proceeds shall be applied to the
"construction, equipment and operation of said railroad.

"Sec. 6. That no rights shall vest under this act unless the
"construction of said railroad shall be commenced within two

"years and be continued and carried on with reasonable pro-
"gress, and no benefits shall be claimed for on account of any part
"of the road constructed after seven years from the passage of
"this act.

"Approved March 4, 1879."

CHAPTER 3166.

An Act to amend Section 26 of an act entitled an act to provide a General Law for the Incorporation of Railroads and Canals, approved February 19th, 1874, and to Grant Aid to Railroads and Canals Incorporated under said act.

The people of the State of Florida, represented in Senate and Assembly, do enact as follows:

Section 1. That section 26 of an act entitled "An act to provide a General Law for the Incorporation of Railroads and Canals," approved February 19th, 1874, shall be so amended as to read as follows:

Sec. 26. That upon the completion of each section of six miles and fraction of a section of six miles at the terminus of any railroad or canal incorporated under this act, in accordance with such plans and specifications of construction as may have been agreed upon between the Trustees of the Internal Improvement Fund and the board of directors of such railroad or canal company, it shall be the duty of said Board of Trustees to convey to such railroads or canal company the alternate sections of swamp or overflowed lands lying on either side of the line of such railroad or canal for a distance of six miles, and when there is an insufficientcy of such lands lying along and within the distance aforesaid of such line of railroad or canal to make up the number of acres of land hereby granted them, and in that event the deficit shall be located elsewhere and within twenty miles of the line of such railroad or canal in alternate sections as aforesaid: Provided, however, that the lands to be located more than six miles from any such railroad or canal, to supply any deficiency as aforesaid, shall be granted subject to any lien now existing thereon, by reason of any indebtedness incurred under the laws of this State.

Approved March 12, 1879.

ASSIGNMENTS OF ERROR.

We assign as error that the Court erred in sustaining the defendant's demurrer and in dismissing the bill, because the bill upon its face shows that the Court had jurisdiction.

2nd. That if jurisdiction was not shown as between the Trustees of the Internal Improvement Fund and the complainant, it at all events should have been retained as to the Jacksonville, Tampa & Key West Railway Company.

ARGUMENT.

JURISDICTION.

The complainant is a citizen of the State of Connecticut; the defendants, citizens of the State of Florida. The Court therefore has jurisdiction of this cause unless the complainant sues as the "assignee of a chose in action" and to recover its "contents" within the meaning of those words as they are used in the proviso of the first section of paragraph 629 of the Revised Statutes of the United States. It is claimed by the Trustees that complainant's rights which it seeks to enforce by this bill, flow from certain contracts made between the Jacksonville, Tampa and Key West Railway Company, of the one part, and the Trustees or the State of Florida, of the other part. Our contention is that the rights sought to be enforced come to the complainant, a citizen of Connecticut, under its contract with the Jacksonville, Tampa and Key West Railway Company, a citizen of Florida, and concern certain lands the titles to which vested in said railway company, in fee, as far back as the date of the acts of the Legislature of Florida recited in the bill and hereinafter referred to.

Whether the Court has or has not jurisdiction depends solely upon whether the complainant is suing as assignee of a "chose in action" to recover its "contents" or as a party to a contract between it and the railway company to enforce rights as to lands owned by the railway company.

THE ASSIGNEE OF LANDS.

The assignee of lands may sue in a Federal Court when his assignor and the party sued are both citizens of the same State.

McDonald v. Smalley, 1 Peters, 620–623.

The jurisdiction flows from the citizenship of the parties: the right to recover flows from the sufficiency of the title."

Story J., in Briggs v. French, 2 Sumner, 258.

The Federal Courts have jurisdiction of a suit to recover personal property brought by a purchaser when his vendor could not have sued because he and the defendant were citizens of the same State.

Deshler v. Dodge, 16 How., 622.

In Sheldon v. Sill (8 Howard, 449) Mr. Justice Grier, delivering the opinion of the Court, discusses the meaning of the term "chose in action" and says: "The term 'chose in action' is

one of comprehensive title. It includes the infinite variety of contracts, covenants and promises which confer on one party a right to recover, a personal chattel or a sum of money from another by action. It is true, a deed or title for land does not come within this description."

JURISDICTION ESTABLISHED.

These authorities are sufficient to establish the jurisdiction of the Court in the case at bar if we are correct in our position that the Jacksonville, Tampa and Key West Railway Company was the owner of the land involved in this litigation and that the object of the suit is to establish the right of The Plant Investment Company to that land under the contract between it and the railway company. It therefore becomes necessary to establish the correctness of that position by authority.

THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY WAS THE OWNER OF THE LAND.

The lands involved in this litigation were of those granted by the United States to the State of Florida by the Act of Congress of September 28th, 1850.

Sec 9 U. S. Statutes at Large, page 519.

All lands granted by that Act to the State of Florida were subject to disposal by the Legislature of Florida in such manner as it might deem expedient, without any right on the part of any persons except the Government of the United States to question such disposal.

Mills County vs. Burlington, M. Rd. Co., 107 U. S., 557.

The Jacksonville, Tampa and Key West Railway Company was incorporated under the name of the Tampa, Peace Creek and St. Johns River Railroad Company, under the Act entitled "An act to provide a general law for the incorporation of railroads and canals," approved February 19th, 1874, and amendments.

Under Section 26 of said Act of February 19th, 1874 as amended by Act of March 12th, 1879, and under an Act approved March 4, 1879, as above, said railroad company had a land grant of the alternate sections lying on either side of its line for a distance of six miles, and when there was an insufficiency of such lands lying within that distance it was entitled to make up the deficiency within twenty miles of the line of its road.

In 1881, the name of the railroad company was changed to the Jacksonville, Tampa and Key West Railway Company.

So averred in bill. Record, page 3.

The first section of said Act of March 4, 1879, declares that said alternate sections "be and the same are hereby granted to said company," and the 26th section of said Act of February 19th, 1874, as amended by Act of March 12th, 1879, refers to them as the "lands hereby granted."

TITLE PASSED AT DATE OF ACTS.

The words quoted from the Acts cited above, under which the Jacksonville, Tampa & Key West Railway Company acquired these lands, passed title in fee to the lands as of the date of the Acts of the Legislature; when the plat of the route of the said company was filed with the Board of Directors, the lands were sufficiently identified and the title to the same vested.

Wright vs. Roseberry, 121 U. S., 488.

This case reviews and affirms all former decisions of the Supreme Court of the United States on this subject. See page 499 to 509.

Mo., etc., R'y. Co. vs. Kansas, etc., R'y. Co,
97 U. S., 491-496,
Leavenworth, etc., R'y. Co. vs. U. S.,
92 U. S. 741.
Van Wyck vs. Knevals,
106 U. S., 360
Railroad Co. vs Baldwin,
103 U. S., 426-429,
Trustees Internal Improvement Fund vs. St. Johns River Improvement Railway Company,
16 Florida 531.

In the case of Mo., etc., R'y Co. vs. Kansas, etc., R'y Co., cited above, Mr. Justice Field, delivering the opinion of the Court, says: "It is always to be borne in mind, in construing a congressional grant, that the act by which it is made is a law as well as a conveyance, and that such effect must be given to it as will carry out the intent of Congress. That intent should not be defeated by applying to the grant the rules of the common law, which are properly applicable only to transfers between private parties. To the validity of such transfers it may be admitted that there must exist a present power of identification of the land;

and that where no such power exists, instruments, with words of present grant, are operative, if at all, only as contracts for cession. But the rules of the common law must yield in this, as in all other cases, to the legislative will.

"As to the intent of Congress in the grant to the plaintiff there can be no reasonable doubt. It was to aid in the construction of the road by a gift of lands along its route, without reservation of rights, except such as were specifically mentioned, the location of the route being left within certain general limits to the action of the plaintiff. When the location was made and the sections granted ascertained, the title of the plaintiff took effect by relation as of the date of the act, except as to the reservations mentioned; the act having the same operation upon the sections as if they had been specifically described in it."

97 U. S., 497.

In the case of Leavenworth vs. U. S., cited above, Mr. Justice Davis, delivering the opinion of the Court, says: "There be, and is hereby granted" are words of absolute donation, and import a grant in praesenti. This court has held that they can have no other meaning; and the land department, on this interpretation of them, has uniformly administered every previous similar grant.

Railroad Company v. Smith, 9 Wall. 95,
Schulenberg v. Harriman, 21 id. 60,
1 Lester, 513,
8 Opin. 257, 11 id. 47.

They vest a present title in the State of Kansas, though a survey of the lands and a location of the road are necessary to give precision to it, and attach it to any particular tract. The grant then becomes certain, and by relation has the same effect upon the selected parcels as if it had specifically described them.

DEEDS NOT NECESSARY TO VEST TITLE.

The deeds which the above cited Acts provide shall be made by the Trustees to the railway company are not at all necessary to vest title; the title comes from the grants contained in and evidenced by the Acts of the Legislature.

Wright vs. Roseberry, 121 U. S., 488,
Langdeau vs. Hanes, 21 Wallace, 521.

In the case last cited, it is distinctly decided that a legisla-

tive grant gives a perfect title, and that a subsequent patent is only documentary evidence of that title.

HAVING TITLE JACKSONVILLE, TAMPA & KEY WEST RAILWAY MADE CONTRACT WITH THE PLANT INVESTMENT COMPANY TO BUILD.

The Jacksonville, Tampa & Key West Railway Company thus having under legislative grant perfect title to the land in controversy, which title vested when its route was located, decided that instead of building its own line between the points stated in the bill, it would have the same built by The Plant Investment Company; that it had power to contract with The Plant Investment Company for this purpose cannot, of course, be doubted. The Acts granting the lands expressly provided that the lands or their proceeds should be applied to the construction, equipment and operation of the railroad.

Section 5., Act approved March 4th, 1879.

In commenting upon the Act of September 28, 1850, under which the swamp and overflowed lands were granted to the States, the Supreme Court of the United States uses the following language: "The lands themselves might be conveyed to the levee contractors for work performed, or the contractors might be paid in money or in scrip representing land."

McGee vs. Mathis, 4 Wallace, 155.

The Plant Investment Company did contract for the building of this part of the Jacksonville, Tampa & Key West Railroad under its contract with the railway company, and it now seeks by this bill to enforce its rights to these lands. It is perfectly clear under the authority cited that there is no necessity for this Court to enforce any contract which ever existed between the railway company and the Trustees, or any obligation or promise arising thereunder. Let the Court decree a performance by the railway company of its contract with The Plant Investment Company, and the complainant will be satisfied. Indeed, the Trustees never had it in their power to do any act, matter or thing which would in anywise defeat the title of the railroad company to these lands. In the case of Wright vs. Roseberry, cited above, the powers of the Secretary of the Interior were about those of the trustees of the Internal Improvement Fund under the Land Grant Acts of the State of Florida, and as to such powers the Supreme Court has, in that case, this to say: "It is plain that the difficulty of

identifying the swamp and overflowed lands could not [illegible] impair the effect of the granting clause, by whomsoever such identification was required to be made. When identified the title would become perfect as of the date of the act. The patent would be evidence of such identification and declaratory of the title conveyed. It would establish definitely the extent and boundaries of the swamp and overflowed lands in any township, and thus render it unnecessary to resort to oral evidence on that subject. It would settle what otherwise might always be a mooted point, whether the greater part of any legal subdivision was so wet and unfit for cultivation as to carry the whole subdivision into the list. The determination of the Secretary upon these matters, as shown by the patent, would be conclusive as against any collateral attacks, he being the officer to whose supervision and control the matter is especially confided. The patent would thus be an invaluable muniment of title and a source of quiet and peace to its possessor. But the right of the State under the first section would not be enlarged by the action of the Secretary, except as to land, not swamp or overflowed, contained in a legal subdivision, as mentioned in the fourth section; nor could it be defeated, in regard to the swamp and overflowed lands, by his refusal to have the required list made out, or the patent issued, notwithstanding the delays and embarrassments which might ensue.

121 U. S., 500, 501.

THE BILL SHOULD HAVE BEEN RETAINED AS TO THE CASE MADE AGAINST THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY.

But the Trustees have as a matter of fact conveyed to the Jacksonville, Tampa and Key West Railway Company lands to which we were entitled under our contract with that railway company, and have made to us a conveyance of other lands containing a declaration and imposing a condition which should not appear on the face of the deed. The Court certainly has jurisdiction of the bill filed by The Plant investment Company against the Jacksonville, Tampa and Key West Railway Company to compel a specific performance of the contract made between these two companies, and as an incident thereto to reform the said deed so as to make it evidence the rights The Plant Investment Company acquired under said contract.

The complainant is certainly entitled to the lands which have

been conveyed by the Trustees to the Jacksonville, Tampa and Key West Railway Company; its claim to said lands arose under no contract between it and the Trustees, but under its contract with the Jacksonville, Tampa and Key West Railway Company; in a word, all of the rights which the complainant seeks to assert in this case are such as arose under its contract with the Jacksonville, Tampa and Key West Railway Company. If it be remembered that all of the lands to which the Jacksonville, Tampa and Key West Railway Company is entitled vest in it absolutely under the acts of the Legislature of the State of Florida, and that whatever claims are set up by the complainant arose under a contract between it and the said railroad company the case is divested of all difficulties.

APPELLEE'S CONTENTIONS.

No case can be found which militates against the position taken above. The case of Corbin vs. the County of Black Hawk, 105 U. S., 659, will doubtless be relied on by the counsel for the Trustees. In that case, the Supreme Court of the United States decided that the suit was really one to compel the acceptance of certain purchase money upon the the acceptance of which one who claimed to be the grantee of cerlain lands would be entitled to a patent from the county of Black Hawk. In that case the bill distinctly alleged "that the legal title to the lands in controversy remained vested in the county." (See page 661, middle). That case was correctly decided and does not at all conflict with the case at bar, because there something remained to be done by the grantee before his right to the land became perfect, while here nothing remained to be done by the Jacksonville, Tampa and Key West Railway Company in order to perfect its title to the land.

In the case of N. Y., &c., Co. vs. the Memphis Water Co., 107 U. S. 205, it is plainly stated in the opinion delivered by the Court that the principal object of the bill was to have declared valid certain contracts made between the defendant and the complainant's assignor; there was no question whatsoever as to the title to land. The case of Sheldon vs. Sill (8 Howard, 449) was a suit by an assignee of a chose in action to collect money by the foreclosure of a mortgage; this case is really strongly in our favor, because the Court expressly admitted the right of a mortgagee to sue in ejectment, although the mortgagor and the defendant are citizens of the same State.

In the case of Shoecraft vs. Bloxham (124 U. S., 730) the Supreme Court say: "The object of the suit is to perfect the title to the lands mortgaged by enforcing the performance of the contract." (See page 735, near bottom). In that case, the complainant admittedly had no title to the land, nor had his assignor, and the real object of the bill was to acquire such title. The Supreme Court also say in that case: "This conveyance of all right, title and interest "in and to" the lands granted, or agreed to be granted, by the contract of sale, carried with it to the complainant and interest in the contract so far as such lands were concerned, that is, the right to perfect the title to the lands by enforcement of the contract. It was in legal effect the assignment of the contract itself. If he cannot enforce that contract and thus secure the title to the company, the deed of trust, so far as the lands covered by the contract are concerned, is worthless as a security. If he has no interest in the contract he has no standing in court to ask its enforcement, and, if he is to be regarded as the assignee of the contract under the deed of trust, he is disabled from maintaining the suit in the Circuit Court by Section 629 of the Revised Statutes. He is subject to the same disability in that respect as his assignor.

In the case of the New York, Florida and Havana Construction Company vs. the Jacksonville, Tampa and Key West Railway Company, et al., decided by this Court, it was apparent that the complainant's assignor had no title whatsoever to the land in controversy. All of these cases, as well as many others which may be cited by the Trustees to show want of jurisdiction to hear and determine this case, will be found, on examination, to be cases in which the real object was to enforce alleged rights existing between one of the defendants and the plaintiff's assignor, not, as in this case, suits to enforce rights which the complainant has against his assignor, although relief may be prayed against other defendants as an incident thereto. This distinction is an obvious one, and though the points of difference between the case at bar and those on which the Trustees rely may not at first sight be plainly apparent, yet on careful examination it will be found that the distinction we have made is sound, and that no Federal Court has ever decided that it had no jurisdiction where the citizenship of the plaintiff and defendant was different, and where the object of the bill was not to enforce contracts still executory between two defendants, citizens of

the same State, but to enforce rights to which the complainant is entitled under a contract with one of the defendants, the other defendants being certainly proper, if not necessary, parties in the declaration and enforcement of such rights.

We submit that the demurrer should have been overruled.

R. G. ERWIN,
JOHN F. HARTRIDGE,
Solicitors for Appellant.

IN THE

Supreme Court of the United States.

THE PLANT INVESTMENT COMPANY,
Appellant,

vs.

THE JACKSONVILLE, TAMPA AND KEY WEST RAILWAY COMPANY AND THE TRUSTEES OF THE INTERNAL IMPROVEMENT FUND OF FLORIDA,
Appellees.

Brief for the Trustees of the Internal Improvement Fund of Florida.

STATEMENT OF THE CASE.

A bill was filed on April 9, 1885, in the Circuit Court for the Northern District of Florida in Chancery by the Plant Investment Company, a corporation and citizen of Connecticut, against the Jacksonville, Tampa and Key West Railway Company, a corporation and citizen of the State of Florida, and the Trustees of the Internal Improvement Fund of Florida, citizens of Florida. The bill sets up that appellant made a contract with said railway company, which provided that appellant, as a part of the consideration for the construction by appel-

lant of a portion of the line of said railway company, should receive the alternate sections of land to which said railway company was or might be entitled under the laws of the State of Florida for the construction thereof. It further alleges that said railway company became entitled to indemnity lands in alternate sections within twenty miles on each side of said portion of its line to make up the deficiency on account of its grant of alternate sections within six miles thereof, and that under the contract of appellant with said railway company appellant is entitled to have the same, and that said deficiency amounts to about 120,000 acres.

The bill further sets up that the said trustees refused to convey lands for indemnity to said railway company, but agreed to convey about 73,500 acres to said railway company on account of its special grant of 10,000 acres per mile, with the understanding that if it should be held by a competent court that the railway company was entitled to these lands as indemnity for alternate sections, that the said trustees should convey other lands to the railway company in lieu thereof. That the railway company requested the said trustees to convey said lands to the appellant, with the understanding that appellant should take them subject to said conditions, and said trustees did thereupon convey said lands to appellant upon said conditions.

That said trustees also conveyed to said railway company 7,973 acres, which appellant, claims that it was entitled to as indemnity lands, and it is prayed that the railway company be decreed to convey same to appellant, and said trustees be decreed to convey a like quantity of other lands to said railway company on account of its 10,000-acre grant. The bill also prays that the deficiency of lands in the grant of alternate sections within six miles of said portion of said railway be ascertained, and that it be decreed that appellant is entitled to make up

said deficiency from like alternate sections within twenty miles of said road, and that said 73,500 acres be applied to making up such deficit, and that appellant may hold the same absolutely and without condition.

The Jacksonville, Tampa and Key West Railway Company made no defense. To the bill said trustees demurred and assigned as grounds of demurrer, (1st) that it appears on the face of the said bill that the court has no jurisdiction in the premises; (2d) that said bill contains no equity; (3d) that complainant in said bill does not state facts sufficient to entitle it to the relief prayed, or to any discovery or relief against these defendants as to the matters contained in said bill.

This demurrer was sustained and the bill was dismissed.

The following legislation of the State of Florida may be considered in connection with the case.

A and B. Sections of chapter 610, act of January 6, 1855, vesting lands in the trustees of the Internal Improvement Fund of Florida upon certain trusts, as follows:

[Chap. 610, Act of Jan. 6, 1885, McClelland's Dig., pages 589–90.]

"SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened:* So much of the five hundred thousand acres of land granted to this State for internal improvement purposes, by an act of Congress passed the third day of March, A. D. 1845, as remains unsold, and the proceeds of the sales of such of said lands heretofore sold as now remain on hand and unappropriated, and all proceeds that may hereafter accrue from the sales of said lands; also all the swamp land or lands subject to overflow, granted to this State by an act of Congress approved September 28, A. D. 1850, together with all the proceeds that have accrued or may hereafter accrue to the State from the sale of said lands, are hereby set apart and declared a distinct and separate fund, to be called

the Internal Improvement Fund of the State of Florida, and are to be strictly applied according to the provisions of this act.

"SEC. 2. For the purpose of assuring a proper application of said fund for the purposes herein declared, said lands and all the funds arising from the sale thereof, after paying the necessary expenses of selection, management, and sale, are hereby irrevocably vested in five trustees, to wit: In the governor of this State, the comptroller of public accounts, the State treasurer, the attorney general, and the register of State lands, and their successors in office, to hold the same in trust for the uses and purposes hereinafter provided, with the power to sell and transfer said lands to the purchasers and receive payment for the same, and invest the surplus moneys arising therefrom, from time to time, in stocks of the United States, stocks of the several States, or the internal improvement bonds issued under the provisions of this act, and drawing not less than six per cent. annual interest; also, the surplus interest accruing from such investments, and to pay out of said fund, agreeably to the provisions of this act, the interest from time to time, as it may become due on the bonds to be issued by the different railroad companies under the authority of this act; also, to receive and demand, semi-annually, the sum of one-half of one per cent. (after each separate line of railroad is completed) on the entire amount of the bonds issued by said railroad company, and invest the same in stocks of the United States or State securities, or in the bonds herein provided to be issued by said company. Said trustees shall also invest the surplus interest of said sinking fund investment as it may accrue. Said trustees shall also demand and receive from each railroad company named in this act the amount due to the Internal Improvement Fund from said railroad company, according to the provisions herein contained, on account of interest on the bonds issued by said company; and a refusal or neglect on the part of the president and directors of any railroad company herein named to comply with the provisions of this act, as to the payment of said trustees of the amount due and payable to the fund, as provided in sections fourteen, fifteen, and sixteen of this chapter, on account of interest and sinking fund, the in-

dividual property of each and all the directors shall be liable in an action of debt to said trustees for the amount due and unpaid, with twenty per cent. interest until paid."

B. Section 29, chapter 610, act of January 6, 1855:

"*Be it further enacted*, That the alternate sections of the swamp and overflowed lands for six miles on each side, may be granted by the General Assembly to such railroad companies to be hereafter chartered, as they may deem proper, on their compliance with the provisions of this act as to the manner of constructing the road and drainage, and the sale and transfer of the alternate sections thus granted shall be in accordance with the provisions of this act."

C. Act of March 4, 1879, providing for grant of lands to the Tampa, Peace Creek and St. John's River Railway Company, which afterwards became the Jacksonville, Tampa and Key West Railway Company:

[Chapter 3168; approved March 4, 1879.]

AN ACT TO GRANT CERTAIN LANDS TO THE TAMPA, PEACE CREEK AND ST. JOHN'S RIVER RAILWAY COMPANY.

"*The people of the State of Florida, represented in Senate and Assembly, do enact as follows:* SECTION 1. That the alternate sections of the lands granted to the State of Florida by the United States by the act of Congress of September 28, 1850, for and within six miles on each side of the track or line of the Tampa, Peace Creek and St. John's River Railroad Company, a body corporate, chartered under the laws of this State to construct a line of railroad from the waters of Tampa Bay to the waters of the St. John's River, to pass through the counties of Hillsborough, Polk, and Orange, be and the same are hereby granted to said company: *Provided, however*, the said company shall comply with the provisions of the act entitled 'An act to provide and encourage a liberal system of internal improvements in this State,' approved January 6, 1855, and the amendments thereto, as to the manner of constructing the road and drainage:

Provided, however, that nothing herein shall prevent such company from adopting such guage as it may choose.

"SEC. 2. That if the said company shall so amend its charter as to authorize it to construct its road, or a branch road or extension through the counties of Marion and Putnam, or either or through any part of or into either, then the said company shall be entitled to, and the State hereby grants the alternate sections within the limit of six miles aforesaid of and along the line of such road, branches or extensions, on the terms and conditions aforesaid.

"SEC. 3. That upon the completion of the grading and laying on the cross-ties of ten miles of said road, its branches or extensions, the titles to the said alternate sections opposite said ten miles of road so graded and furnished with cross-ties shall vest in said company, and a deed therefor shall be issued by the trustees of the Internal Improvement Fund to the said company: *Provided, however*, that for every forty miles of road so graded and furnished with cross-ties, ten miles shall be completed, ironed, and equipped and in operation.

"SEC. 4. That upon the filing with the board of trustees by said company of the survey of the route which may be selected by said company, or any twenty miles thereof, the trustees shall withdraw, at the election of said company or its president, the odd or even numbered sections within such limits along or opposite the route or section thereof of twenty miles so surveyed from sale: *Provided, however*, That the same shall be restored to sale by the board if the survey of the entire route is not filed within twelve months from the passage of this act.

"SEC. 5. That the State of Florida hereby grants to said company, in consideration of the greatly improved value which will accrue to the State from the construction of said road, its branches and extensions, ten thousand acres for each mile of road it may construct of the lands granted to the State under said act of September 28, 1850; said lands to be of those which may be nearest the line of said road, its branches and extensions: *Provided, however*, That the grants of land made by this section is made subject to the rights of all creditors of the Internal Improvement Fund and to the trusts to which said fund is applicable and subject under the act entitled 'An act to provide for and

encourage a liberal system of internal improvements in this State,' approved January 6, 1855, and subject to control, management, sale and application of said fund, and the lands constituting the same, by the trustees of the Internal Improvement Fund, for the purposes of said trust under said act: *Provided, however,* That the title to the lands granted under this section is not to vest until they shall be released from the indebtedness existing against said trust fund, it being the purpose of this section to grant the residuary interest of the State in the lands granted by said act of September 28, 1850, after satisfaction has been made of said indebtedness, to the extent or in the quantity indicated hereby, to aid said railroad company: *Provided further, however,* That upon any arrangement being consummated between said company and the trustees of the Internal Improvement Fund and the creditors of such fund, for the release of such lands from such indebtedness, then the titles to such lands as may be so released shall vest in the said company in the proportion of ten thousand acres for each mile of railroad then graded and furnished with cross-ties, or that may thereafter be graded and furnished with cross-ties: *Provided,* That for every forty miles of road so graded and furnished with cross-ties, ten miles shall be fully completed and equipped and in actual operation: *Provided, further,* That all the lands granted by this act, or their proceeds, shall be applied to the construction, equipment and operation of said railroad.

"SEC. 6. That no rights shall vest under this act unless the construction of said railroad shall be commenced within two years and be continued and carried on with reasonable progress, and no benefits shall be claimed for or on account of any part of the road constructed after seven years from the passage of this act."

D. Act of March 12, 1879, providing for conveyance of alternate sections of land within six miles of railroads and indemnity within twenty miles to companies under the general incorporation act:

[Chapter 3166, Act of March 12, 1879.]

AMENDMENT OF GENERAL INCORPORATION ACT.

"Upon the completion of each section of six miles and fraction of a section of six miles at the terminus of any railroad or canal incorporated under this chapter in accordance with such plans and specifications of construction as may have been agreed upon between the trustees of the Internal Improvement Fund and the board of directors of such railroad or canal company, it shall be the duty of said board of trustees to convey to such railroad or canal company the alternate sections of swamp or overflowed lands lying on either side of the line of such railroad or canal for a distance of six miles, and when there is an insufficiency of such lands lying along and within the distance aforesaid of such line of railroad or canal to make up the number of acres of land hereby granted, then and in that event the deficit shall be located elsewhere and within twenty miles of the line of such railroad or canal in alternate sections as aforesaid: *Provided, however*, That the lands to be located more than six miles from any such railroad or canal, to supply any deficiency as aforesaid, shall be granted subject to any lien now existing thereon by reason of any indebtedness incurred under the laws of this State."

E. Act of February 25, 1881, amending act of March 4, 1879 (C), as to route and land grant of said railway company:

[Chapter 3333, approved February 25, 1881.]

"*The People of the State of Florida, represented in Senate and Assembly, do enact as follows:* SECTION 1. That section two (2) of said act be amended to read as follows: That if the said company shall so amend its charter as to authorize it to construct its roads or branches, or extensions of such road, from the city of Tampa to the city of Jacksonville, and through the counties of Hernando, Sumter, Marion, Putnam, Clay, Duval, and Manatee, or either of them, or through any part of or into either of said counties, then the said company shall be entitled to, and the State hereby grants the alternate sections within

the limits aforesaid of and along the line of such road or extension, on the terms and conditions aforesaid.

"SEC. 2. That section four (4) of said act be amended to read as follows: That upon the filing with the board of trustees by said company of the survey of the route which may be selected by said company, or any twenty (20) miles thereof, the said trustees shall withdraw, at the election of said company, or its president, the odd or even numbered sections within such limits, along or opposite the route or section thereof of twenty (20) miles so surveyed, from sale: *Provided, however,* That the same shall be restored to sale if the survey of the entire route of the main trunk of said road is not filed within twelve months from the passage of this act.

"SEC. 3. That section six (6) of said act be amended to read as follows: That the lands granted to said company shall not vest in said company except as said railroad shall be graded, cross-tied and ironed in sections of five miles, and that no rights shall vest under this act unless the construction of said railroad shall be commenced within one year from the passage thereof, and be continued with reasonable diligence; and no benefit shall be claimed for or on account of any part of the road constructed after seven (7) years from the passage of this act: *Provided,* That the grants of lands herein made shall not interfere with any rights or privileges heretofore granted to other railroad companies."

F. Act of March 4, 1881, declaring all grants of lands as therein specified made at the then present session of the legislature, to be subject to Internal Improvement Act of 1855, and to the control, sale, &c., of said trustees:

[Chapter 3326, approved March 4, 1881.]

"*The people of the State of Florida, represented in Senate and Assembly, do enact as follows:* SECTION 1. That any and all grants of land, other than the alternate sections within the usual six-mile limit, made or that may be made by any act passed or to be passed at the present session of the legislature, shall be subject to the rights of all creditors of the Internal Improvement Fund, and to the trusts to which said fund is applicable and subject under the ac

approved January 6, 1855, and entitled 'An act to provide for and encourage a liberal system of internal improvements in this State,' and subject to control, management, and sale and application of said fund and the lands constituting the same by the trustees of the Internal Improvement Fund, for the purposes of said trust under said act."

ARGUMENT.

I.

It appears on the face of the Bill that the Court has no Jurisdiction.

1st. The suit by appellant is as assignee of the Jacksonville, Tampa and Key West Railway Company, a corporation, and citizens of Florida, to enforce against the trustees of the Internal Improvement Fund of the State of Florida, also citizens of said State, an alleged contract for certain lands, whether the contract is contained in the statutes alleged to give a right to the lands to the railway company, or the action of the trustees in originally reserving lands for indemnity, or both; which suit the alleged assignor could not have brought in said court; hence, the court had no jurisdiction.

Corbin *v.* County of Black Hawk, 105 U. S., 659;
Shoecraft *v.* Bloxham, 124 U. S., 730.

In argument for appellant it was contended that the act of March 12, 1879 (D), was a grant of the title of lands *in præsenti*. It is not perceived how this contention can effect the case, for there was no grant to appellant, nor even a conveyance to appellant by the railway company, nor even a claim in the pleadings that appellant has title to the lands other than those conveyed to it by trustees on account of the 10,000-acre grant of said railway company on its order. All that appellant claims is to have a contract with the railway company

for payment in lands, and an order from the railway company on the trustees for conveyance thereof. The whole gist and substance of the suit is to enforce and obtain specific performance against the trustees by the alleged assignee of the railway company of the alleged contract made by the statutes of the State and the action of the trustees thereon. But said act, it is submitted, clearly does not contain such a grant; it is merely a direction to the said trustees to convey lands to the companies which shall come under its application, and may constitute a contract with such companies, but is not itself a conveyance or present grant of title.

Rice *v.* Railroad Co., 1 Black., U. S., 358, 376.

As to these indemnity lands also, the legislature could not divest the title of the trustees irrevocably vested in them under the act of 1855 (A), as long as moneys therein required to be paid under the terms of said trust remain unpaid. (*Ib.*)

As to the contention that the bill might have been dismissed as to the trustees of Internal Improvement Fund and retained as to the railway company, it is submitted that such contention is manifestly untenable. The railway company is manifestly a mere nominal defendant, really a complainant in interest, and clearly the court could not decree, without the State or the trustees of its Internal Improvement Fund being parties, that the railway company is entitled to have indemnity lands within twenty miles of its line of road, which is the main relief prayed by the bill, upon which any other or minor relief is wholly dependent and contingent. So it is submitted that clearly the bill was properly wholly dismissed for lack of jurisdiction, as well as because it made no showing for relief, as hereinafter shown.

2d. Another reason why the court has not jurisdiction is because said Jacksonville, Tampa and Key West Rail-

way Company is really and substantially and in interest a complainant in said bill to which said trustees, citizens of the same State, are defendants. The United States courts in equity do not regard the formal disposition of parties on the Record, but their real interest and their status as fixed by such real interest, and where by this test there are parties complainant and defendant who are citizens of the same State, the court is without jurisdiction.

Quincy *v.* Steel, 120 U. S., 241–2.

In the case at bar the suit is to obtain a decree that said railway company is entitled to indemnity lands in addition to its other land grants. The suit is brought in the name of an alleged assignee of its alleged right to receive conveyances of such indemnity lands on account of a portion of its road. It is not alleged that the railway company ever refused to bring suit or to permit the use of its name in a suit against said trustees; its interests are all those of a complainant; it made no defense, and it is entirely apparent that the suit is a collusive one so far as appellant and the railway company are concerned, and that it is brought in the name of appellant, and the railway company is called a defendant instead of a complainant, in an ineffectual attempt to give the court jurisdiction.

II.

THERE IS NO EQUITY IN THE BILL AND NO SUFFICIENT SHOWING TO ENTITLE COMPLAINANT TO ANY DISCOVERY OR RELIEF.

It is not anticipated that the court will get beyond the questions of jurisdiction, which it is believed dispose of the case, but if for any reason which counsel has been unable to perceive, this court should think that the court below had jurisdiction, then it is submitted that the demurrer is good upon the other grounds stated above.

The question involved in the contention of appellant that this railway company is entitled to indemnity lands within twenty miles to make up deficiencies of alternate sections in the six-mile limit is one of very great consequence to the State of Florida and to many corporations in that State. As will appear from the public statutes of the State there are many analagous grants to other corporations, and also as the court may perceive from Exhibit C of the bill (Record, page 8), such claims for indemnity have conflicted with other large grants, contracts, and conveyances, the trustees of the Internal Improvement Fund have decided that there is no grant of indemnity in such cases, and this ruling and the action thereon have become the base of title to many hundreds of thousands of acres of land in said State.

The swamp and overflowed lands which were granted to the State of Florida by the United States were, by act of the legislature of January 6, 1855, irrevocably vested in such trustees for certain trusts, among which was the trust to sell and convey such lands and from the proceeds to pay the interest on certain bonds.

See said act "A," hereinbefore cited.

The right of the legislature to grant the alternate sections of lands within six miles of railroads other than those specified in said act of 1855 was reserved therein, but with no mention of or reservation as to indemnity.

See section 29, "B," hereinbefore cited.

By act of March 4, 1879, the legislature made the grant to, or contract with, the Tampa, Peace Creek and St. John's River Railway Company therein expressed, which company afterwards became the Jacksonville, Tampa and Key West Railway Company.

This act grants to said company the alternate sections within six miles of its line, and grants it 10,000 acres

per mile additional of the lands nearest its line of road upon the conditions therein expressed, but does not provide for any indemnity for such alternate sections.

See "C," hereinbefore cited.

By act of March 12, 1879, passed at the same session of the legislature as the act last-above cited, provision was made, by amendment of the general incorporation act, for indemnity within twenty miles to make up deficiencies of alternate sections within six miles to aid railroads incorporated under said act.

See "D," hereinbefore cited.

By act of February 25, 1881, the act of March 4, 1879 (C), was amended as to route of said railway company, and making additional provision for alternate sections within the six-mile limit, but no provision for indemnity.

See "E," hereinbefore cited.

By act of March 4, 1881, it was provided that all grants of land made at that session, other than those of alternate sections within the six-mile limit, should be subject to the trusts of said act of 1855 (A), and subject to sale, &c., by said trustees, showing that the legislature still considered that such grants of lands, other than alternate sections within the six-mile limit, did not divest the title of the said trustees for the purposes of the original trust.

As appears from these statutes, the debts of the trust fund have not been extinguished, nor has the original trust been fully performed, for the payment thereof, for which said lands were by the act of 1855 "irrevocably" vested in said trustees; nor is there any allegation in the bill that said original trust has been fully performed. No railway company can, as a matter of right or in a court of equity, claim a decree for any such lands other than alternate sections within the six-mile limit while

such debts are unsatisfied and the original trust therein not completely performed; though it is true that said trustees, in order to assist railway companies to construct their lines, have in some instances conveyed them lands beyond the six-mile limit, on account of their other grants, to the extent that they thought they could do so without depriving themselves of the means of performing said original trust, and without objection from said creditors, and thus the conveyances on account of the grant to defendant railway company of 10,000 acres per mile were made.

It will have been perceived that the act of March 4, 1879 (C), and the amendatory act of February 25, 1881, which specially provide for, define, and enumerate all land grants to said railway company, make no provision for the indemnity claimed, and it is obvious that it was not the intention of the legislature, by an amendment of the general incorporation act intended to give a moderate amount of aid in alternate sections and indemnity to roads incorporating under the general act, and having no special land grant, thereby to grant such indemnity to roads having large special grants, and whose aid from the State was fixed by special acts. This is not only apparent in this particular case, but it is in accordance with the well-settled rule that a matter which is provided for and regulated by special statute is taken out of the terms or application of general statutes.

Potter's Dwarris on Stat., 110, 273;
Luke *v.* The State, 5 Fla., 185, 194.

But, further, it is a physical and legal impossibility that the special grant to said railway company (which it has never relinquished, but continues to hold), under the act of March 4, 1879 (C), and the indemnity grant of the act of March 12, 1879 (D), should operate together, and both apply to the same railroad. The special grant of

said first act (C) is of 10,000 acres per mile of those lands nearest the line of said road after taking the alternate sections within six miles of the road under the grant of a previous section, and it is set forth in the bill itself that after taking such lands as are nearest the line of the road under the 10,000-acre grant there are no indemnity lands within the twenty-mile limit to take, but appellant prays that the court alter the act of March 4, 1879 (C), and instead of taking the 10,000-acre grant of land nearest the line of the road, take them somewhere else and give the railway company said land nearest the line of its road as indemnity under said amendment to the general incorporation act (D) before cited.

There is an allegation in the bill that the trustees at one time reserved these lands as indemnity for said railway company. Such a reservation is always merely to withhold the land from other disposition until it shall appear whether or not the railway company shall be entitled to it. The trustees finally determined in this case that the railway company was not entitled to it as indemnity. But in no event could an estoppel work against this public trust fund or these statutory trustees in the premises. If the statutes do not give the railway company or its assignees these lands as indemnity a temporary reservation by said trustees certainly can not do it. These statutes are notice to all persons of their contents, control the grants, and are the law which must govern the subject. Nor is it understood that appellant presses a claim of estoppel; if it does, however, it is submitted that there is nothing in such a claim in this case.

C. M. Cooper,
J. C. Cooper,
Counsel for the Trustees of the Internal Improvement Fund of Florida.